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ROBERT HUNTER BIDEN

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

17 ROBERT HUNTER BIDEN, an
18 individual,

19 Plaintiff.

20 |

21 | PATRICK M. BYRNE, an individual,

22 Defendant.

Case No. 2:23-cv-09430-SVW-PD

**PLAINTIFF ROBERT HUNTER
BIDEN'S RESPONSE IN
OPPOSITION TO DEFENDANT'S
EX PARTE APPLICATION TO
PREVENT THE DEPOSITION OF
FBI SPECIAL AGENT DAVID
SMITH**

Judge: Hon. Stephen V. Wilson

1 Defendant Patrick M. Byrne’s (“Defendant”) most recent *ex parte* application
2 to prevent Plaintiff Robert Hunter Biden (“Plaintiff”) from taking the deposition of
3 FBI Special Agent David Smith is frivolous and nothing but another delay tactic. In
4 light of Defendant’s pattern of similar conduct in this regard, sanctions are warranted.

5 In the deposition of Defendant, which did not occur until after the close of
6 discovery because Defendant had left the United States and made myriad of
7 fantastical excuses as to why he could not return for his deposition, Defendant in his
8 deposition testified that Agent Smith corroborated his libelous statements about
9 Plaintiff. For that reason, the Court allowed Plaintiff to notice a deposition of Agent
10 Smith after the close of discovery. ECF No. 170 at 3. Whether a deposition occurs
11 orally or by written questions is entirely within the discretion of the noticing party.
12 *See Fed. Rs. Civ. P. 30 & 31.* The Government would not agree to an oral deposition
13 but would agree to a written deposition. Rather than engage in extensive litigation
14 before this Court and other federal courts in Washington, D.C., including appellate
15 courts, Plaintiff exercised his discretion under the Federal Rules of Civil Procedure to
16 notice a written deposition.

17 On March 14, 2025, Plaintiff served his questions for Agent Smith along with
18 a notice of deposition on Defendant, the only other party in this matter. Fed. R. Civ.
19 P. 31(a)(3). Under Rule 31, Defendant has 14 days—until March 28, 2025, to serve
20 his cross-questions for Agent Smith. Fed. R. Civ. P. 31(a)(5). After the period for
21 serving redirect and re-cross questions, if there are any, Plaintiff (and only Plaintiff)
22 as the noticing party must serve all parties’ questions along with the notice of
23 deposition and a subpoena on the witness and the court reporter. Fed. R. Civ. P. 31(b).
24 The U.S. Department of Justice will accept service on behalf of both.

25 On that same day, Defendant made an *ex parte* application for an order
26 preventing Plaintiff from conducting the deposition of Agent Smith, even though the
27 Court had already ruled Plaintiff could seek his deposition. ECF No. 208.
28

1 The proposed deposition was extensively discussed at a hearing before the
2 Court on March 17, 2025. The Court stated, “I am thinking that deposition should go
3 forward with some dispatch.” Hr’g Tr. 5:6–7. Plaintiff informed the Court that
4 “Defendant gets 14 days to submit whatever questions” they want and “that is all we
5 are really waiting on.” Hr’g Tr. 9–11. The Government has stated that it will accept
6 any questions from Defendant. Any question Defendant submits will be read to Agent
7 Smith by the court reporter at the deposition, pursuant to the statutory framework of
8 Rule 31. Whether the Government’s attorney asserts a privilege and instructs the
9 witness not to answer of course depends entirely on the question. Plaintiff has
10 consulted with the Government to ensure it will allow Agent Smith to answer
11 Plaintiff’s questions, to ensure this exercise is not a waste of the Court’s time.
12 Defendant is free to do likewise, or not, at his discretion. If Defendant wishes, his
13 counsel may simply submit his questions and then see how the Government responds
14 after the question is put to the witness, which is precisely what happens at an oral
15 deposition. If his questions are not answered, he may raise the issue with the Court
16 and obtain whatever relief, if any, that the Court deems appropriate, which is precisely
17 what happens after an oral deposition.

18 On March 18, 2025, the Court denied the *ex parte* application to prevent Agent
19 Smith’s deposition. ECF No. 211. Since then, nothing has happened. Plaintiff has
20 been waiting for Defendant to serve questions. Defendant has not done so.

21 Instead, on March 27, Defendant filed the instant *ex parte* application,
22 requesting that the Court “suspend the deposition of special agent Smith as improperly
23 noticed” because it purportedly does not set forth the address of Agent Smith nor the
24 name and address of the court reporter who will take the deposition. ECF No. 219 at
25 5–6, 9. Defendant’s assertions are frivolous and sanctionable. The notice obviously
26 sets forth Agent Smith’s known address, as required by Rule 31(a)(3): 1100 L Street,
27 N.W., Washington, DC 20005. ECF No. 219-1 at 6. Represented witnesses are
28 always served through their attorneys. The name of the court reporter is not required.

1 In fifty years of legal practice, undersigned has never seen a deposition notice name
2 the court reporter. Rule 31 requires a “descriptive title” which the notice provides:
3 “an officer authorized to administer oaths and will be recorded stenographically.”
4 ECF No. 219-1 at 6. That is how court reporters have been referred to in the thousands
5 of depositions notices undersigned counsel has sent or received in the last fifty years.
6 The address, of course, is 1100 L Street, N.W., Washington, D.C. 20005. Defendant
7 cannot seriously expect a deposition notice to list the home residence of an FBI agent
8 or U.S. Department of Justice court reporter, personal information with no possible
9 relevance to this deposition.

10 Defendant’s counsel is aware that no extraordinary issue has arisen regarding
11 Agent Smith’s deposition since the March 17, 2025, hearing. *Cf.* Hon. Stephen V.
12 Wilson, Law and Motion Schedule, [https://www.cacd.uscourts.gov/honorable-](https://www.cacd.uscourts.gov/honorable-stephen-v-wilson)
13 [stephen-v-wilson](https://www.cacd.uscourts.gov/honorable-stephen-v-wilson) (stating “Counsel are advised that this Court allows ex parte
14 applications solely for extraordinary relief”). Since the hearing, nothing has happened
15 because everyone has been waiting on Defendant to propose questions.

16 Defendant claimed an FBI agent working in counterintelligence as part of the
17 “League of Shadows” would corroborate his libelous nonsense about Plaintiff.¹ ECF
18 No. 211 at 2. Defendant did not believe Plaintiff would be able to depose Agent Smith
19 about those claims. Defendant is now panicked that Plaintiff will do just that, proving
20 Defendant was lying in his public statements about Plaintiff and that Defendant
21 perjured himself in these proceedings.

22 For no purpose other than to obstruct the search for the truth of Plaintiff’s
23 allegations, *cf. Taylor v. Illinois*, 484 U.S. 400, 430 (1988) (“[T]he purpose [of]

25 _____
26 ¹ The “League of Shadows” is a principal antagonist in the Batman comics. *See, e.g.*,
27 Batman Begins (Warner Bros. 2005) (featuring League of Shadows member Ra’s al
28 Ghul) & The Dark Knight Rises (Warner Bros. 2012) (featuring League of Shadows
member Bane). Defendant and his counsel are using these court proceedings to play
a practical joke.

1 discovery . . . is the quest for truth[.]”), Defendant’s counsel filed yet another *ex parte*
2 application about Agent Smith’s deposition, forcing Plaintiff’s counsel to respond in
3 less than 24 hours. Sanctions are warranted for this abusive conduct, which also
4 conflicts with the Court’s orders at the March 17 hearing and ECF No. 211. The Court
5 warns all parties that “this Court allows *ex parte* applications solely for extraordinary
6 relief” and that “sanctions may be imposed for misuse of *ex parte* applications.” Hon.
7 Stephen V. Wilson, Law and Motion Schedule, <https://www.cacd.uscourts.gov/honorable-stephen-v-wilson>. If this *ex parte* application does not violate that
8 admonition, it is unclear how any *ex parte* application could. Sanctions are in the
9 discretion of the Court, but Plaintiff respectfully suggests that a prohibition on filing
10 future *ex parte* applications might be a suitable penalty for abusing the privilege of
11 filing *ex parte* applications.
12

13 For the foregoing reasons, Plaintiff requests the Court deny the *ex parte*
14 application to prevent Agent Smith’s deposition and impose appropriate sanction on
15 Defendant and his counsel.

16 Dated: March 28, 2025 RICHARD A. HARPOOTLIAN, PA
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18 By: /s/ Richard A. Harpootlian
19

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